

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-473-WS**

IN RE:)	
)	
Application of Tega Cay Water)	RETURN TO CITY OF TEGA CAY’S
Service, Inc. for adjustment of)	MOTION FOR EXTENSION OF TIME
rates and charges and modifications to)	
certain terms and conditions for the)	
provision of water and sewer service.)	
_____)	

Pursuant to Public Service Commission of South Carolina (“Commission”) Regulation 103-829.A, and other applicable statutes, rules and regulations, Tega Cay Water Service, Inc. (“TCWS” or the “Company”) herein makes its return to the Motion for Extension of Time (“Motion”) of the City of Tega Cay, South Carolina (“City”). In support thereof, TCWS would respectfully show as follows:

I. BACKGROUND

On February 16, 2010, TCWS filed its application in the instant docket seeking an adjustment of its Commission approved rates and charges and modifications to certain terms and conditions for the provision of water and sewer service. On February 26, 2010, the Commission’s Staff issued a transmittal letter and a notice of filing and hearing (“Notice”) scheduling the hearing in this matter for June 7, 2010. By separate letter dated February 26, 2010, the Commission established testimony pre-filing deadlines for all parties of record, setting forth that all parties of record other than TCWS as the applicant, would be required to pre-file direct testimony on May 10, 2010, and surrebuttal testimony no later than May 24, 2010. On March 24, 2010, the City Petitioned to Intervene in this matter which was granted by the Commission by letter of that same date. The City asserted therein that “[u]ntil the City has

completed its review of TCWS's application and better understands the bases for TCWS's requested rate hike, the City does not know if it will offer testimony and introduce evidence in this proceeding." Following its admission as a party of record in this proceeding, and as of the date of this filing, the City has not propounded any discovery upon TCWS.

II. ARGUMENT

TCWS would not object to a reasonable extension of time within which the City may prefile its direct testimony as long as a similar extension is granted for the Company to prefile any rebuttal testimony which it may desire to prefile. However, TCWS submits that the City's request to extend the deadline to prefile its direct testimony for more than a month to a date that is subsequent to the schedule hearing date is unwarranted and unreasonable – particularly at this late date. The City has not set forth any reason for its failure to previously conduct discovery in this matter pursuant to the Commission's rules of practice and procedure. Rather, the City seeks to have the Commission cure its dilatory participation in this proceeding. As discussed further below, the City's conclusory arguments set forth in its Motion are insufficient to demonstrate good cause for the requested enlargement of time and should therefore be denied.

1. The City chose not to conduct timely discovery.

In its Petition to Intervene ("Petition"), the City asserted that "[u]ntil the City has completed its review of TCWS's application and better understands the bases for TCWS's requested rate hike, the City does not know if it will offer testimony and introduce evidence in this proceeding." Petition at 2. Following their admission as a party of record in this proceeding on March 24, 2010, the City had forty-seven days prior to its pre-filed testimony deadline in which to review the Company's application and conduct discovery as it saw fit. Additionally, the City had over two months from the time it received Notice of this proceeding in which to review the Company's application and determine how it would prefer to proceed in this matter.

Notwithstanding the substantial period of time which the City was afforded to conduct its analysis and review of the Company's request and despite its statement that its review of the Company's application would enable it to determine whether it would offer testimony and evidence in this proceeding, the City declined to take any action with respect "to prepar[ing] an appropriate opposition to the rate increase." Motion at 2. Even though the City unilaterally failed to timely avail itself of discovery under Commission regulations, the City now seeks to have the Commission cure its dilatory participation to the detriment of the other parties of record.¹

Here, the City has not set forth any circumstances which would justify its unreasonable delay in seeking discovery and has not established that it is not responsible for any delay in its duty to participate meaningfully in this proceeding. Despite having no less than one and one-half months in which it could have engaged in discovery pursuant to Commission regulations, the City now claims that "certain discovery...is necessary for City to prepare an appropriate opposition to the rate increase." Motion at 2. Further, the City now asserts at this late date that an extended period of time would allow the City to "propound discovery on Applicant in the areas of operation and maintenance expenses (especially electricity and chemicals), inflow and infiltration effects and related costs and investment in the Applicant's system." Motion at 2.

¹ In support of its request for an extension, the City cites Bonds v. Electrolux Home Products, Inc., 2006 WL 3955825 for the proposition that an extension based on an illness in an attorney's family constitutes "good cause" under Rule 6, SCRCp. Initially, TCWS would note that Bonds did not address a request by a party for an extension of time before the requisite deadline had passed. *See* Rule 6(b)(2), SCRCp ("upon motion made **after** the expiration of the specified period"). (Emphasis supplied). Rather, the court in that matter permitted an *ex post facto* extension for service of a summons and complaint due to the attorney's failure to timely serve the pleadings within the established time limits in part because of his son's intervening diagnosis with autism. In support of its agreement to an extension to the then-expired period in which the complaint should have been served, the court relied upon McKenzie v. Target Stores, 1997 U.S. Dist. LEXIS 22738 (D.S.C. Jan. 21, 1997). As explained by the Bonds court, the court in McKenzie "found there was good cause to grant an extension when the delay was due to serious illness suffered by counsel for the plaintiff, **and plaintiff herself was not responsible for the delay.**" Bonds, 2006 WL 3955825, *4. (Emphasis supplied). Because the attorney in Bonds was "**unable** to devote his attention to plaintiff's case" (emphasis supplied), the court reasoned that his failure to comply with the established time limits was understandable. The City has set forth no such justification for its failure to timely propound discovery requests upon TCWS. Rather, it simply seeks an extension because it chose not to do so earlier and now it apparently believes discovery would be a useful tool.

However, the City fails to offer any explanation as to why it was unable to propound discovery requests on these matters before now or set forth any excuse for its negligence in not previously pursuing discovery.²

The City, as a party of record in this proceeding, is and has been responsible for complying with the Commission's rules and regulations governing practice and procedures in proceedings before it. *See* Commission Regulation 103-801 ("These rules shall apply to any person who participates in proceedings before the Public Service Commission"). Therefore, the City was obligated to engage in timely discovery as it believed was necessary to prepare for its participation in this matter.³ By failing to do so, it is apparent that the City is merely seeking to unnecessarily postpone this matter as a means of curing its unilateral failure to previously engage in discovery. Because the City has not demonstrated good cause for its delay, the Commission should deny the City's motion.

2. The Commission would be required to delay the hearing.

Even if the City has demonstrated good cause for the requested delay, which TCWS denies, granting the requested extension would work an undue hardship on the other parties of record given the statutorily mandated deadlines for ruling on the Company's application. S.C. Code Ann. §58-5-240(C) provides that when a water or wastewater desires to put a new rate schedule into effect, "[t]he Commission shall rule and issue its order approving or disapproving the changes in full or in part within six months after the date the schedule is filed." Because

² It appears the City may be asserting that it was precluded from propounding discovery requests until such time as the Company had submitted its testimony. Initially, the Company notes that the City asserted that its review of the application in and of itself would enable it to determine whether it needed to submit testimony and evidence in this proceeding. Additionally, however, the Company submitted substantial financial information with its application as required by Commission Regulations 103-512.4 and 103-712.4, including information about which the City now believes it is necessary to inquire. *See* Application, Exhibits B and C. Again, despite being put on notice of the basis of the Company's application for over two months, the City unjustifiably declined to make timely discovery requests on these matters.

³ To the extent that the City may attempt to assert that it was unable to previously propound discovery requests on TCWS, or that it was in some way precluded from so doing, such an assertion would be clearly unfounded. *See* n. 2, *supra*.

TCWS filed its application on February 16, 2010, the Commission is required to issue its ruling in this proceeding no later than August 21, 2010.⁴

As the Commission is aware, the hearing in this matter is currently scheduled for June 7, 2010. The City has requested a delay in the time in which it would be required to pre-file direct testimony until June 15, 2010, or eight days after the currently scheduled hearing date. Therefore, the City's request would require a delay in the hearing on the merits in order to afford TCWS its right to prefile rebuttal testimony. Because the City has asked that all subsequent deadlines be extended respectively, the hearing on the merits would effectively be delayed until mid-July, 2010.⁵ Given the need for the court reporter to prepare the transcript of the hearing, and for each of the parties to submit proposed orders, late-filed hearing exhibits, or post-hearing briefs, as may be necessary, the City's requested delay would place an undue burden on the parties so that the order could be issued by August 21, 2010, in this matter as statutorily required. Because of the delay in the timing of the City's request, its failure to demonstrate good cause for the requested delay, the statutorily imposed deadlines upon the Commission, and the resulting undue and unreasonable burden that would be placed upon the other parties of record – not to mention the potential inconvenience to the Commission, TCWS submits that the City's request as posed should be rejected.

3. The current schedule will allow the City conduct timely discovery.

Notwithstanding its foregone opportunities to propound discovery requests before now, the City appears to base its request for an extension of time upon an assertion that it does not have sufficient time to conduct discovery in this proceeding. At the outset, TCWS notes that the City overlooks the fact that pre-filed testimony of witnesses itself acts as a form of discovery.

⁴ This calculation assumes that the Commission would elect to extend the period for the issuance of its order in this matter five days as permitted by S.C. Code Ann. §58-5-240(D).

⁵ Even if the Commission shortened the time for rebuttal and surrebuttal testimonies, setting the hearing before this date would likely work an undue hardship on the parties given the Commission's currently scheduled hearings, the summer holidays, and the previously established vacation plans of the witnesses and counsel.

The pre-filing of testimony under the Commission's rules is a procedure akin to discovery since it informs the parties, in a timely manner prior to hearing, of the nature of another party's case. Therefore, by pre-filing the testimony of its witnesses, TCWS has put the City on notice of the basis, reasoning and need for its application in this proceeding.

Nevertheless, the City states that in order for it "to prepare an appropriate opposition to the rate increase" that it will be required to conduct certain discovery. However, pursuant to the Commission's rules, the City has ample time to conduct such discovery as it sees fit. Commission Regulation 103-833 provides that parties may submit written interrogatories and requests for production at least ten (10) days prior to the date assigned for commencement of hearing, which in this proceeding is June 7, 2010. Furthermore, parties have not less than 20 days after the service thereof to respond to such requests unless the time is extended by the Commission for good cause shown. Additionally, pursuant to Commission Regulation 103-834, a party may ask the Commission for leave to take the testimony of a witness by deposition by filing the request with the Commission at least ten (10) days prior to the date assigned for commencement of hearing. As of today, the City has thirty-three days in which to conduct any discovery it sees fit, including, as it asserts is needed, "depositions of Applicant's staff and consultants."⁶ Therefore, the City has time to conduct discovery before the scheduled hearing in this matter so that it can prepare its case in this matter as needed. Considering the availability of discovery without the necessity for the undue hardship the other parties of record would experience by a grant of the City's motion, the City cannot establish good cause for the requested extension.

⁶ TCWS notes that depositions of its witnesses would necessarily be conducted pursuant to Commission Regulation 103-834 and the South Carolina Rules of Civil Procedure. *See* Commission Regulation 103-835 ("The S. C. Rules of Civil Procedure govern all discovery matters not covered in Commission Regulations. ").

4. The Company consents to an extension to only the testimony deadlines.

Notwithstanding the foregoing, TCWS is willing to consent to a one-week extension to the City's direct pre-filed testimony deadline, with a commensurate extension to the remaining deadlines, to the extent that the hearing date remains unchanged.⁷ The Company submits that the other parties of record should not be penalized for the City's inexcusable failure to involve itself in this matter within previously scheduled time frames. Therefore, to the extent that the hearing currently set for June 7, 2010 is not rescheduled, and that the Company is afforded a commensurate period of time in which to respond to the City's direct testimony through rebuttal testimony, it would not object to a reasonable extension for the City.

CONCLUSION

Because the City has to date neglected to avail itself of discovery which is afforded by Commission regulations, and has failed to demonstrate good cause for its requested delay, the City's request for an extension of time in which to prefile its direct testimony should be denied. Nevertheless, TCWS is willing to consent to a reasonable extension to the pre-filed testimony deadlines, including a commensurate extension to its rebuttal testimony deadlines, to the extent that the Commission maintains the currently scheduled hearing date in this proceeding.

WHEREFORE, for the foregoing reasons, Tega Cay Water Service, Inc. respectfully requests that the Commission deny the City of Tega Cay's Motion for Extension of Time and grant such other and further relief as is just and proper.

[SIGNATURE PAGE FOLLOWS]

⁷ Pursuant to the Commission's Pre-filed testimony letter, other parties of record are currently required to pre-filed direct testimony by May 10, 2010. Because May 10 is a state holiday, however, testimony of these parties would not be due until May 11, 2010. Therefore, should the Commission be inclined to extend the testimony filing deadlines by one week, TCWS's rebuttal testimony would be due on May 18, 2010, and the other parties surrebuttal testimony would then be due on May 25, 2010.

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This 5th day of May, 2010.
Columbia, South Carolina